

U.S. Department of Energy
Washington, D.C.

ORDER

DRAFT
DOE O 350.1X

Approved: XX-XX-03
Expires: XX-XX-07

SUBJECT: CONTRACTOR HUMAN RESOURCE MANAGEMENT PROGRAMS

1. OBJECTIVES.

- a. To establish Department of Energy (DOE), including National Nuclear Security Administration (NNSA), responsibilities, requirements, and cost allowability criteria for the management and oversight of contractor human resource management (HR) programs.
- b. To ensure DOE contractors manage their HR programs to support the DOE mission, promote workforce excellence, champion workforce diversity, achieve effective cost management performance, and comply with applicable laws and regulations.
- c. To implement consistent requirements that allow contractors flexibility in determining how to meet the requirements.
- d. To ensure all elements of cash and noncash compensation are considered in the design and implementation of an appropriate total compensation program but are not used as a means to avoid needed cost reductions in either or both.

2. CANCELLATION. DOE O 350.1, *Contractor Human Resource Management Programs*, dated 9-30-96. Cancellation of an Order does not, by itself, modify or otherwise affect any contractual obligation to comply with such an Order. Cancelled Orders incorporated by reference in a contract will remain in effect until the contract is modified to delete the reference to the requirements in the cancelled Orders.

3. APPLICABILITY.

- a. DOE Elements. Except for the exclusions in paragraph 3c, this Order applies to all DOE elements, including NNSA elements, as listed in Attachment 1.
- b. Site/Facility Management Contractors. This Order does not apply to contractors.
- c. Exclusions.
 - (1) Activities that are regulated by the Nuclear Regulatory Commission (NRC) through a license or by a State under an agreement with the NRC, including activities certified by the NRC under Section 1701 of the Atomic Energy Act [same as Section 830.2(a)].

DISTRIBUTION:
All Departmental Elements

INITIATED BY:
Office of Resource Management

- (2) Activities conducted under the authority of the Director, Naval Nuclear Propulsion Program under Executive Order 12344, incorporated into Public Law 106-65, Section 3216 (50 U.S.C. 2406).
4. REQUIREMENTS. Requirements are set forth in Chapters I through VII of this Order.
5. RESPONSIBILITIES. Assignments of responsibility are set forth in Chapters I through VII of this Order.
6. REFERENCES. Applicable references are listed in Chapters I through VII of this Order.
7. CONTACT. Contacts are listed in Chapters I through VII of this Order.

BY ORDER OF THE SECRETARY OF ENERGY:

KYLE E. McSLARROW
Deputy Secretary

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ATTACHMENT 1—DOE ORGANIZATIONS TO WHICH DOE O 350.1X IS APPLICABLE

CHAPTER I. LABOR RELATIONS

1. OBJECTIVES.

- a. To ensure Department of Energy (DOE) management and operating contractors pursue collective bargaining practices that promote efficiency and economy in contract operations, judicious expenditure of public funds, equitable resolution of disputes, and effective collective bargaining relationships.
- b. To ensure effective and complete communications with management and operating contractors before contract negotiations and during the term of a contract on matters that may have a significant impact on work rules, make-or-buy decisions, or past customs and practices.

2. REQUIREMENTS.

- a. DOE retains absolute authority on all questions of security, security rules, and administration of security rules. However, to the fullest extent possible, DOE will consult with representatives of management and labor in formulating security rules and regulations that affect the collective bargaining process.
- b. DOE will not take a public position concerning the merits of a labor dispute between a contractor and its employees or organizations representing those employees.

3. RESPONSIBILITIES.

- a. Director, Office of Legacy Management.
 - (1) Establishes DOE labor relations policy in consultation with field organizations.
 - (2) Represents DOE Headquarters on all matters involving contractor labor relations issues, including—
 - (a) informing DOE senior management of significant labor relations developments,
 - (b) acting as DOE liaison to other Government agencies and to international unions and their representatives,
 - (c) serving as a clearinghouse for labor relations information,
 - (d) coordinating union representation at meetings and conferences initiated by DOE Headquarters elements, and
 - (e) approving all DOE policy affecting contractor labor relations.

- (3) Works with DOE program offices that originate or change qualification standards, testing requirements, or other programs that may affect conditions of employment for contractor employees to ensure that they are developed and/or implemented consistent with collective bargaining requirements.

b. Heads of Contracting Activities (HCAs) or National Nuclear Security Administration (NNSA) Site Office Managers.

- (1) Review collective bargaining issues with contractors and reach agreement on economic parameters before the start of negotiations.
- (2) Consult regularly with contractors during the terms of collective bargaining agreements to stay abreast of matters of interest and concern to DOE.
- (3) Serve as DOE liaisons to regional governmental agencies and offices and to regional union officials.
- (4) Notify the Office of Legacy Management of National Labor Relations Board charges and any significant labor relations issues.
- (5) Provide timely information and advice to DOE Headquarters and others concerning local contractor labor issues and arbitration decisions.

4. REFERENCES.

- a. Federal Acquisition Regulation (FAR) Subpart 22.1, Basic Labor Policies, which provides guidance to contracting officers on labor relations matters.
- b. Department of Energy Acquisition Regulation (DEAR) Subpart 970.22, Application of Labor Policies, which provides DOE guidance to contracting officers on labor relations matters.
- c. DEAR 970.3102-05-6, Compensation for personal services, which addresses allowability of compensation costs.

5. CONTACT. Office of Legacy Management, 202-586-7550.

CHAPTER II. LABOR STANDARDS

1. OBJECTIVES.

- a. To ensure applicable labor standards are included in all DOE contracts and subcontracts.
- b. To cooperate with the Department of Labor (DOL), as appropriate, to—
 - (1) obtain information,
 - (2) provide complete and timely reports, and
 - (3) exercise oversight responsibility to ensure contractor compliance with applicable laws.

2. REQUIREMENTS. Proposed acquisition and designated contractor work packages must be reviewed to determine the applicability of the Davis-Bacon Act [Public Law (P.L.) 403, dated 3-3-31; 40 U.S.C., Sections 276–276a-5] and/or the Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*), as amended, and work will be accomplished in accordance with such determinations.

3. RESPONSIBILITIES.

- a. Director, Office of Legacy Management.
 - (1) Coordinates Departmental comments on proposed revisions to DOL regulations and provides interpretations of final revisions to Headquarters and field elements.
 - (2) Prepares and submits the Davis-Bacon Semiannual Enforcement Report to DOL by April 30 and October 30 of each year.
 - (3) Submits a consolidated annual forecast of construction programs, required by DOL All Agency Memorandum 144, to the DOL Wage and Hour Division administrator by April 10 of each year.
 - (4) Coordinates responses to Congress and DOL on labor standards complaints on acquisitions administered by Headquarters.
- b. HCAAs or NNSA Site Office Managers.
 - (1) Establish labor standards committees to advise contracting officers on the applicability of the various labor standards statutes to contracts and proposed work packages.

- (2) Review DOL Standard Form- (SF-)98, Notice of Intention to Make a Service Contract and Response Notice, and its attachment (SF-98a) to ensure contemplated work is appropriately covered by the Service Contract Act and that forms are prepared properly, and forward the forms to DOL.
- (3) Advise Director of Worker and Community Transition of complaints and significant labor standards violations generated by contractor employees and others.
- (4) Ensure all contracts contain the appropriate labor standards provisions.
- (5) Ensure bidders and contractors are provided with applicable labor standards information and, where necessary, conferences and contract orientation meetings are held for solicitations or contracts.
- (6) Assist DOL in preparing for a hearing on and/or investigating any alleged violations or disputes on alleged violations.
- (7) For Service Contract Act covered contracts in excess of \$10,000.00, furnish SF-279, Federal Procurement Data System Individual Contract Action Report, or its equivalent, to the Federal Procurement Data System (see 29 CFR 4.8).
- (8) Request Davis-Bacon Act project wage determinations from DOL on DOL SF-308, Request for Wage Determination and Response to Request, for instances in which general area decisions are not available or are not appropriate to the DOE site or job. Accordingly, submit wage data to DOL.
- (9) Ensure payroll and job-site audits are conducted as may be necessary to determine compliance with the Davis-Bacon Act.
- (10) Investigate complaints under the Davis-Bacon Act to determine compliance and proceed as follows.
 - (a) If no violation is discovered, advise the complainant of the reasons for the conclusion.
 - (b) If a violation is discovered—
 - 1 determine the amount of back wages, fringe benefits, and overtime pay due each employee, and request the contractor to make restitution;
 - 2 determine the amount of liquidated damages due, if any, and request the contractor to make restitution;

- 3 withhold sufficient funds to compensate employees and to cover any liquidated damages that may be due when the contractor does not agree with the findings and refuses to make restitution;
- 4 furnish an enforcement report to the administrator, Wage and Hour Division, DOL, within 60 days after completion of an investigation where the Davis-Bacon Act underpayments by a contractor total \$1,000.00 or more, there is reason to believe the violations are willful, the contractor does not agree with the findings and refuses to make restitution, or DOL requested the investigation; and
- 5 ensure funds withheld to compensate employees for back wages are forwarded to the Comptroller General for disbursement if restitution is not made.

- (11) Prepare and submit the Davis-Bacon Semiannual Enforcement Report to the Director, Office of Legacy Management, by April 21 and October 21 of each year.

4. REFERENCES.

- a. Davis-Bacon Act, P.L. 403, dated 3-3-31 (40 U.S.C., Sections 276–276a-5).
- b. Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*).
- c. FAR Subpart 22.4, Labor Standards for Contracts Involving Construction, which explains the applicability of the Davis-Bacon Act.
- d. FAR, Subpart 22.10, Service Contract Act of 1965, as amended, which explains the applicability of the Service Contract Act.
- e. DEAR 970.2204-1-1, Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities.

5. CONTACT. Office of Legacy Management, 202-586-7550.

CHAPTER III. CONTRACTOR WORKFORCE PLANNING, MANAGEMENT, AND RESTRUCTURING

1. OBJECTIVES.

- a. To implement workforce planning and develop management and restructuring strategies and performance metrics involving recruitment, retention, and development programs that ensure efficient operations and continued availability of the critical knowledge, skills, and abilities required for the Department's missions.
- b. To provide reasonable notice to employees and their representatives, public officials, and other stakeholders of necessary changes in contractor employment and to consult with them in planning for workforce restructuring on a schedule that minimizes the impacts on programmatic activities.
- c. To minimize reductions at DOE facilities, to the extent practicable, through the use of options that minimize layoffs such as reassignment and retraining, early retirement, voluntary separation incentives, and attrition management.
- d. To coordinate, as appropriate, management and restructuring strategies with assistance provided to communities to mitigate the impact of employment reductions.

2. REQUIREMENTS.

- a. Workforce Planning. Processes to identify current and future workforce critical skill requirements will be developed and maintained.
- b. Workforce Management. Management strategies will be developed to use recruitment, retention, and development best practices to ensure continued availability of the critical workforce knowledge, skills, and abilities required for the Department's missions, and performance measures will be developed to assess success in meeting this objective.
 - (1) For NNSA sites, performance metrics will be maintained on the status of critical skill staffing and on the results of recruitment, retention, and development goals to maintain critical skills.
 - (2) Programs should be affordable and justified within the constraints of overall operating budgets and should be integrated with other compensation and benefit programs as part of total compensation packages.
 - (3) Use of contractor total compensation and benefit programs, including variable pay, targeted retention incentives, training, and reassignment

opportunities, to support workforce management may be a cost-effective way to ensure maintenance of critical skills.

- (4) Facilities planned for accelerated closure face workforce management issues that may require unique site-specific strategies.

c. Strategies for Positions with Physical Standards.

- (1) Unique strategies may be warranted for DOE contractor jobs that require incumbents to meet physical standards (e.g., protective guard forces) and are an acceptable way to provide employees unable to meet the physical standards the opportunity to continue employment until they meet the requirements for full retirement eligibility. Examples of such strategies include—
 - (a) enhanced reassignment opportunities or alternative employment with contractors at other DOE facilities;
 - (b) postseparation income support or income supplement for alternative employment positions that are compensated at a lower rate of basic pay;
 - (c) career transition assistance programs including career planning, placement, and educational and relocation assistance;
 - (d) retirement plan features designed to address workforce management factors based on specific analyses of the role of pensions in overall employee benefits; and
 - (e) other features specifically designed to meet the Department's contractor workforce management needs and objectives.
- (2) Eligibility to participate in such programs should be based on job classifications that have bona fide job-related physical requirements for satisfactory job performance.
 - (a) Eligibility may be provided for all such jobs or in specific designated classifications.
 - (b) Participation may or may not be voluntary and may require employee premium contributions contingent on the program design determined to be in the best interest of the Department.
- (3) Programs may include sitewide or cross-site agreements between contractors at DOE facilities to facilitate the provision of alternative employment opportunities that include recognition of service credit for benefit and retirement calculations and appropriate transfer of pension assets.

- (4) Program design and pricing should reflect contractor analyses of potential adverse impacts and include suggested actions for mitigation.
 - (5) Options for generating funds for implementing these strategies include (a) using a fund generated by employee contributions in combination with allowable-cost employer contributions and (b) using a discrete portion of total compensation budgets.
- d. Scientist and Engineer Retiree Corps. The Department must have ready access to retired scientists and engineers who may be needed on a part-time basis to support the Department's nuclear weapons program (e.g., to support archiving technical information, to provide data/recollections not available in the active workforce in areas related to weapons disassembly and nuclear weapons testing, to assist with stockpile stewardship activities, and to train or mentor replacement scientists and engineers).
 - (1) The Department will maintain a list of retirees, including an affirmation of their agreement to be members of the retiree corps and necessary identification information to ensure ready access.
 - (2) Access to members of the corps will not be restricted by other policies of DOE or within the control of DOE unless explicitly agreed to by the Secretary of Energy.
 - (3) Members of the retiree corps will maintain their security clearances for as long as they are in the retiree corps program.
 - (4) Inclusion in the corps will not amend, abrogate, or affect any retirement annuity with regard to any DOE-imposed restrictions on such annuity.
- e. Workforce Restructuring. In compliance with Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 and Secretarial policy, a workforce restructuring plan at defense nuclear facilities will be prepared and amended from time to time as warranted. In instances where a workforce restructuring plan is not developed, the objectives of Section 3161 will be applied as feasible.
 - (1) Workforce restructuring plans will be prepared in accordance with "Planning Guidance for Contractor Work Force Restructuring," published in the *Federal Register*, Vol. 63, No. 238, dated December 11, 1998, as amended from time to time.
 - (2) For defense nuclear facilities, workforce restructuring plans and annual reports on contractor workforce restructuring will be submitted to the Under Secretary for Energy, Science and Environment and the Under Secretary for Nuclear Security, for their respective departmental elements, who will approve/disapprove them for delivery to Congress.

- (3) For other DOE facilities, the cognizant field organization should consider whether a workforce restructuring plan is appropriate. Delivery to Congress of a workforce restructuring plan for nondefense facilities is at the discretion of the Secretary.
- (4) Data on workforce restructuring activities for the annual report on contractor workforce restructuring will be submitted by field elements to the Office of Legacy Management. Detailed guidance on submitting this information will be provided by the Office of Legacy Management.

3. RESPONSIBILITIES.

a. Under Secretaries.

- (1) Approve or disapprove proposed reductions in force of 300 or more employees at a single site within a 12-month period.
- (2) Approve or disapprove workforce restructuring plans and implementation reports for submission to Congress.

b. Cognizant Secretarial Officers.

- (1) Develop objectives for workforce planning, including recruitment, retention, and development of a skilled workforce required to accomplish programmatic missions.
- (2) Collaborate with field elements and Headquarters staff offices in the development of performance metrics and contract incentives aimed at achieving workforce planning objectives.
- (3) Review and coordinate workforce restructuring plans.
- (4) Ensure availability of funding for workforce restructuring, and fund costs of workforce restructuring plans that are not restricted to the Worker and Community Transition account consistent with "Guidance for Funding of Enhanced Benefits under Section 3161," provided to operations and field office managers March 2, 1998, as may be amended from time to time.

c. Program Secretarial Officers (PSOs).

- (1) Review and coordinate workforce restructuring plans.
- (2) Assist in resolution of issues concerning workforce planning or workforce restructuring among different PSOs at a site.

d. Deputy Administrator for Defense Programs, NNSA.

- (1) Provides objectives and guidance for maintenance of critical skills and other workforce requirements for activities administered by NNSA.

- (2) Maintains operational awareness of performance in the maintenance of contractor nuclear weapons expertise.

e. Director, Office of Legacy Management.

- (1) Provides information to program Secretarial Offices, field elements, and other interested stakeholders on recruitment, retention, return, and workforce restructuring best practices among DOE contractors and other businesses to assist in the development of workforce planning and succession management policies.
- (2) Approves/disapproves contractor separations affecting between 100 and 300 employees in a 12-month period for facilities within the jurisdiction of the Under Secretary for Energy, Science and Environment. For NNSA related workforce restructuring plans, the Director will prepare proposals for decision by the Under Secretary for Nuclear Security or his delegate.
- (3) Provides direction and guidance in the development and implementation of workforce restructuring plans.
- (4) Makes recommendations to the Under Secretary for approval of workforce restructuring plans for submission to Congress.
- (5) Provides notification to the Secretary of any proposed workforce restructuring activities involving reductions in force of more than 50 employees at a single site, within a 12-month period, before approval.
- (6) Approves/disapproves workforce restructuring actions, including programs to minimize layoffs, and approves funding for enhanced separation benefits provided pursuant to Section 3161 of the Fiscal Year 1993 National Defense Authorization Act.
- (7) Coordinates workforce restructuring reviews with the cognizant program office and with General Counsel, Congressional Affairs, Public Affairs, Management and Administration, and other Departmental elements as appropriate.
- (8) Coordinates notifications to Congress with heads of field elements and with the Assistant Secretary for Congressional and Intergovernmental Affairs.
- (9) Performs other tasks that are assigned to the Office of Legacy Management for Contractor Workforce Planning, Management and Restructuring.
- (10) Ensures compliance with any applicable restrictions on funding for restructuring.

f. Heads of Field Elements.

- (1) In coordination with the cognizant program office, ensure the development and implementation of workforce planning and management strategies to ensure continued availability of critical knowledge, skills, and abilities in the contractor workforce and develop performance metrics to assess success in meeting this objective.
- (2) For NNSA sites, maintain operational awareness of contractor progress in maintaining critical skills for the weapons program and provide operational awareness, including appropriate performance metrics, to Headquarters.
- (3) Approve/disapprove contractor separations of between 50 and 100 in a 12-month period.
- (4) In consultation with the Office of Legacy Management and the cognizant program office, ensure management of workforce changes consistent with Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 and "Planning Guidance for Contractor Workforce Restructuring," issued in December 1998.
- (5) Prepare site-specific workforce restructuring plans (and report on workforce restructuring activities) in accordance with guidance contained in "Planning Guidance for Contractor Workforce Restructuring." In instances where fewer than 100 employees are affected, the objectives of Section 3161 will be applied as practicable.
- (6) Obtain approval for separation incentives beyond those expressly authorized by contract from the director of the Office of Legacy Management early in the planning process, and submit a final workforce restructuring plan to the Office of Legacy Management as early as practicable. (Heads of NNSA field elements should seek advice from the director of the Office of Legacy Management early in the planning process regarding proposed separation incentives beyond those expressly authorized by contract and submit a final workforce restructuring plan to the Office of Legacy Management as early as practicable.)
- (7) Provide the following notifications upon receipt of approval from the Office of Legacy Management.
 - (a) General notification to employees. Ensure contractors provide general information to employees before any public announcement and, where possible, 120 days before the involuntary separation of any employee.

- (b) Notification to the public. Coordinate with the Office of Legacy Management any general announcement describing workforce changes at the site and the estimated number of affected positions.
 - (c) Notifications to individual employees. Ensure contractors provide 60-day notification if the Worker Adjustment and Retraining Notification Act (P.L. 100-379) applies. If it does not apply, contractors will provide individual employees as much notice of involuntary separation as is practicable, but not less than 2 weeks or 2 weeks pay in lieu of notice.
 - (8) For workforce reductions requiring only contracting officer or designee approval, ensure the following are notified before involuntary separation, other than for cause, of 10 or more employees.
 - (a) Office of Legacy Management
 - (b) Cognizant Secretarial Officers
 - (c) PSOs
 - (d) Affected national and local unions
 - (e) State and local governments
 - (f) Congressional delegations
 - (9) Develop mechanisms to ensure hiring preferences are being honored by all prime contractors and designated subcontractors. Requirements will address employee responsibilities as well as use of the DOE automated Job Opportunity Bulletin Board System.
 - (10) Maintain a list of retired scientists and engineers who will constitute a retiree corps to ensure ready access to those whose skills may be needed on a part-time basis to support the Department's Nuclear Weapons Program.
- g. HCA's or NNSA Site Office Managers. Identify contracts to which this chapter is applicable and notify the contracting officers.

4. REFERENCES.

- a. Worker Adjustment and Retraining Notification Act, P.L. 100-379, dated 8-4-88.
- b. National Defense Authorization Act for Fiscal Year 1993 (P.L. 102-484), Section 3161, Department of Energy Defense Nuclear Facilities.
- c. "Planning Guidance for Contractor Work Force Restructuring," *Federal Register*, Vol. 63, No. 238, pp. 68441-68445, dated 12-11-98.

- d. DeGrasse, Robert W., Jr., Director, Office of Worker and Community Transition, Memorandum to Operations and Field Managers, “Guidance for Funding Enhanced Benefits under Section 3161,” dated 3-2-98.
- 5. CONTACT. Office of Legacy Management, 202-586-7550.

CHAPTER IV. COMPENSATION

1. OBJECTIVES.

- a. To ensure contractors develop compensation programs that support performance excellence and maintain the labor market competitiveness necessary to recruit and retain a competent workforce that meets the diverse needs of DOE missions.
- b. To assign DOE oversight responsibilities for contractor compensation programs.

2. REQUIREMENTS. Reasonableness and allowability of compensation costs will be determined for contractors who manage and operate DOE facilities in accordance with this Order, Agency acquisition regulations, and contract provisions.

3. RESPONSIBILITIES.

a. DOE and NNSA Procurement Executives.

- (1) Develop, administer, and interpret the Department's compensation policy.
- (2) Establish Department/NNSA performance objectives for contractor employee compensation programs.
- (3) Approve, in consultation with the cognizant PSOs, initial compensation and any subsequent changes in compensation [e.g. exceptions to executive compensation limitations at 3d(9) below] for each contractor's "senior executive."

b. PSOs.

- (1) Provide advisory comments to the procurement executive regarding approval of initial compensation and subsequent salary actions for contractor senior executives, as defined in FAR 31.205-6(p)(2)(ii).
- (2) Consult with HCAs regarding performance objectives, measures, expectations, and related incentives for contractor performance evaluation and initial compensation program design.
- (3) Review and provide advisory comments to contracting officers on compensation increase plans (CIPs).

c. HCAs or NNSA Site Office Managers. Consult, provide guidance, and ensure contracting officers and those who support contracting officers have the skills, knowledge, and abilities to perform their duties and responsibilities.

d. Contracting Officers.

- (1) Before DOE reimbursement of compensation costs incurred under a contract, evaluate the contractor's documented compensation program, including a review of the contractor's comparison to other industry or relevant benchmark programs consistent with FAR 31.205-6, Compensation for personal services, and DEAR 970.3102-05-6, Compensation for personal services. Evaluations will also consider the contractor's—
 - (a) philosophy and strategy for all pay delivery programs;
 - (b) system for establishing an internal job worth hierarchy;
 - (c) method for relating the internal job worth hierarchy to the external market;
 - (d) system that links individual and/or group performance to compensation decisions;
 - (e) method for planning and monitoring the expenditure of funds;
 - (f) method for ensuring compliance with applicable laws and regulations;
 - (g) system for communicating compensation programs to employees;
 - (h) system for internal controls and self-assessment; and
 - (i) system to ensure that reimbursement of compensation, including stipends for employees who are on joint appointments with a parent or other organization, will be on a prorated basis.
- (2) Evaluate contractor compensation program performance, including application of policies and procedures, at contract award and periodically, but at least once, during the term of contract.
- (3) Before reimbursement of compensation cost incurred under the contract for a contractor's annual CIP request, evaluate the contractor's proposal including the following:
 - (a) comparison of average pay to market average pay;
 - (b) information regarding surveys used for comparison;
 - (c) aging factors used for escalating survey data and supporting information;

- (d) projection of escalation in the market and supporting information;
 - (e) information to support proposed structure adjustments, if any;
 - (f) analyses to support special adjustments; and
 - (g) funding requests for each pay structure that include breakouts of merit, promotions, variable pay, special adjustments, and structure movement that—
 - 1 express proposed plan totals as a percentage of the payroll for the end of previous plan year;
 - 2 fully charge pay actions granted under the CIP when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end;
 - 3 define by mutual agreement of DOE and the contractor specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended; and
 - 4 adjust the CIP amount after cost reimbursement determination if necessary based on major changes in factors that significantly affect the plan amount (e.g., in the event of a major reduction in force or significant workforce “rampup”).
- (4) Evaluate the contractor’s discussion of the impact of budget and business constraints on the CIP amount.
 - (5) Evaluate the contractor’s comparison of pay to relevant factors other than market average pay.
 - (6) Evaluate the contractor’s proposed establishment of an incentive compensation plan against the following criteria.
 - (a) The plan is budget neutral.
 - (b) The documented design of the incentive compensation plan, the funding methodology, and the linkage to contract performance measures support contractor human resource strategic goals.
 - (c) There is a requirement for contracting officer approval of incentive compensation plans before implementation.
 - (d) There is a requirement for annual contracting officer approval of the total dollar amount of the pool, eligible positions, and contract performance goals.

- (e) There is a requirement for a contractor policy that provides for a specific pass-over rate (i.e., percent of participants who will not receive an incentive).
 - (f) There is a requirement for an annual summary report on distributions made under an incentive compensation plan.
 - (g) There is a requirement for pay at risk.
- (7) In consultation with the appropriate program Secretarial Office, determine cost reasonableness of the initial contractor compensation program design.
- (8) Determine cost reasonableness and allowability for the following before DOE reimbursement—
- (a) contractors' annual CIPs for merit, promotion, and adjustment increases;
 - (b) individual compensation (including stipends, if any) of those contractor employees identified by the HCA as among those who report directly to the contractor's senior executive per FAR 31.205-6(p)(2)(ii) (e.g., president, director, general manager);
 - (c) contractors' variable pay and incentive plans, if such plans are established; and
 - (d) overtime control plans, as may be required in accordance with the FAR clause on overtime management.
- (9) Approve salaries for contractor senior executives, as presented on Application for Contractor Compensation Approval (Figure IV-1), subject to the limitations listed below.
- (a) A salary increase will not exceed industry benchmarks, and annual salary increases not due to promotion will be limited to 6 percent.
 - (b) Salary actions resulting from recruitment or promotion will be limited to the lesser of a maximum of 10 percent above the candidate's current salary or a maximum of 6 percent above the previous incumbent's reimbursed salary.
 - (c) Except for promotions and "acting" situations, only one salary increase per individual is permitted during any 12-month period.
 - (d) Salary increases will be within the contractor's original salary range for the position and in accordance with the contractor's salary increase distribution program.

Waivers to the above limitations may be approved by the procurement executive.

- (10) Ensure there are systems and procedures in place to verify the accuracy of the annual Contractor Salary-Wage Increase Expenditure Report (Figure IV-2), as required by the contract, and forward the report to the Office of Resource Management annually.
- (11) Develop additional contract-specific performance measures, expectations, targets, and related incentives as may be required for performance-based contracts to achieve Department objectives and desired improvements in contractor management of employee compensation programs and use of overtime.

4. REFERENCES.

- a. FAR 31.205-6, Compensation for personal services.
- b. DEAR 970.3102-05-6, Compensation for personal services.
- c. National Defense Authorization Act for Fiscal Years 1997 (P.L. 104-201) *et seq.*
- d. DEAR 970.5222-2, Overtime management.

5. CONTACT. Office of Resource Management, 202-586-1368

DOE F 3220.5 (8/86) PREVIOUSLY AD 37 (All other editions are obsolete)		U. S. DEPARTMENT OF ENERGY APPLICATION FOR CONTRACTOR COMPENSATION APPROVAL (Use Attachment To Provide Explanations, Supporting Data, and Justification)		OMB Control No 1910-0600
1. Contractor and Location			2. Contract Number	
PROPOSED SALARY ACTION				
3. Employee's Name		4. Title		
5. Grade		6. New Hire <input type="checkbox"/> Merit Increase <input type="checkbox"/> Promotion <input type="checkbox"/>		
7. Proposed Date	8. Proposed Base Salary ANNUAL MONTHLY	9. Annual Increase	10. Period since last increase	11. Annualized Increase
12. Proposed Incentive Compensation \$		13. Salary Range Minimum Maximum		14. Estimate the percent of employee salary that will be charged to the contract
15. Base salary data of others in same salary range or comparable positions Highest salary _____ Average Salary _____ Lowest Salary _____		16. Number of employees in the range		17. Original merit rating performance evaluation RATING DATE
18. Compensation or Range Percentile		19. Person to whom this individual reports Title _____ Salary \$ _____		20. Other direct compensation e.g., location allowance Type _____ Amount \$ _____ or %
21. Remarks				
23. EDUCATION				
a. College or university and location	b. No. yrs. attended	c. Major field	d. Degree/Date	
24. SALARY HISTORY (Report salary history for past 5 years)				
a. Effective date	b. Position Title	c. Base Salary	d. Employer and Location	
Present				
25. APPROVALS AND CONCURRENCES				
25a. Contractor		25b. Headquarters MA26: Signature _____ Date: _____ Program Official _____ Signature _____ Date: _____		25c. Contracting officer (or designee) Signature _____ Title _____ Date _____
26. DOE APPROVED SALARY		27. DOE APPROVED EFFECTIVE DATE		
<p>PRIVACY ACT STATEMENT: Information about an individual called for on this form and which pertains to the individual's rights benefits and privileges may become part of a "System of Records" subject to the Privacy Act of 1974. That Act provides that information be collected directly from the individual to the greatest extent practicable, and that such records pertaining to him are subject to his access upon request.</p> <p>The purpose of the information is to provide the basis for DOE review and approval of contractor employee's compensation for reimbursement at the specified level under the contract.</p> <p>If information is inadequate or incomplete, action on the request may be delayed or withheld.</p> <p>Authority: Department of Energy Organization Act, P.L. 95-91.</p>				

Figure IV-1. DOE F 3220.5, Application for Contractor Compensation Approval
(<http://directives.doe.gov/pdfs/forms/3220-5.pdf>).

DOE F 350.1
(06-00)

This Form replaces DOE F 3220.8; All other editions are obsolete!

U.S. Department of Energy
Contractor Salary-Wage Increase Expenditure Report

OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Records and Resource Management, SO-31, U.S. Department of Energy, Paperwork Reduction Project (1910-0600), Washington, DC 20585 and to the Office of Management and Budget, Paperwork Reduction Project (1910-0600), Washington, DC 20503

MB Control No.
1910-0600

Operations Office _____ DOE Contractor _____ Location _____

Prepared By (Type Name) _____ Phone _____ Date _____

Expenditures of Funds from prior year salary increase fund - Period from _____ to _____

Employee Group	No. of Eligible Employees	Total Annual Base Salary Date _____	Amount of Fund Distributed						No. of Employees In Fund At Year End	Annual Base Salary At Year End	Variable Pay	
			Merit \$	%	Promotion \$	%	Adjustment \$	%			\$	%
Total Exempt												
Top Management												
Scientists and Engineers												
Administrative												
Technical												
Total Nonexempt												
Administrative												
Technical												
All Others												

Planned Distributions of Funds - Salary Increase Fund - Period from _____ to _____

Total Exempt Fund Exempt \$ _____ % Non-Base Exempt \$ _____ %

Total Nonexempt Fund \$ _____ Non-Base Non-Exempt \$ _____ %

Other Increases

Report here progression increases granted to non represented employees during the prior salary increase fund year.

Employee Group	No. of Eligible Employees	Total Annual Base Salary Date _____	Planned Distribution						Variable \$	%	Amount Granted On An Annual Basis
			Merit \$	%	Promotion \$	%	Adjustment \$	%			
Total Exempt											
Top Management											
Scientists and Engineers											
Administration											
Technical											
Total Nonexempt											
Administrative											
Technical											
All Others											

Figure IV-2. DOE F 350.1, Contractor Salary-Wage Increase Expenditure Report
(<http://directives.doe.gov/pdfs/forms/350-1.pdf>).

CHAPTER V. BENEFITS

1. OBJECTIVES.

- a. To ensure contractors develop employee benefit and workers compensation programs that support recruitment and retention of competent and productive employees and that facilitate the achievement of DOE missions at a reasonable cost.
- b. To ensure implementation of the Departmental program designed to assist all former and current employees at DOE facilities in applying for workers' compensation benefits under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), P.L. 106-398 (42 U.S.C. 7384, *et seq.*).

2. REQUIREMENTS. Reasonableness and allowability of compensation, including employee benefits, will be determined for contractors that manage and operate DOE facilities, in accordance with this Order and the appropriate FAR and DEAR provisions under their contracts.

3. RESPONSIBILITIES.

a. DOE Procurement Executive.

- (1) Establishes Departmental policy, performance objectives, and national targets for contractor employee benefit programs management, and assists HCAs to define performance measures and expectations that will be used to evaluate the implementation of this policy.
- (2) Concurs on the request issued by the Chief Financial Office (CFO) for accrual estimates and disclosure information on contractor postretirement benefits other than pensions for inclusion in the Department's consolidated financial statements.
- (3) Assists, as appropriate, the Assistant Secretary for Environment, Safety and Health in executing responsibilities described in paragraph 3e below, pursuant to Subtitle D of EEOICPA.
- (4) Provides technical assistance to department managers, HCAs, and contractors on contractor employee benefit programs.
- (5) Develops guidance and interprets policy for Departmental elements for the conduct of contractor employee benefit program evaluations and the methods used in those evaluations, including the Employee Benefits Value Study (ben-val) measure and the Employee Benefits Cost Survey Comparison (cost-survey) measure.

- (6) Approves contractor benefit plans and proposed changes that set a precedent or require a deviation from DEAR or FAR cost principles.
- b. NNSA Procurement Executive.
 - (1) Establishes NNSA policy, performance objectives, and national targets for NNSA contractor employee benefit program management, and assists NNSA HCAs to define performance measures and expectations that will be used to evaluate the implementation of policy.
 - (2) Assists, as appropriate, the Assistant Secretary for Environment, Safety and Health in executing responsibilities described in paragraph 3e below, pursuant to Subtitle D of EEOICPA.
 - (3) In consultation with the DOE procurement executive, approves contractor employee benefit plans and proposed changes that set a precedent.
- c. HCAs or NNSA Site Office Managers. Consult, provide guidance, and ensure contracting officers and those who support contracting officers have the knowledge, skills, and abilities to perform their duties and responsibilities.
- d. Contracting Officers.
 - (1) Develop such additional contractor specific performance measures, expectations, and related incentives as may be required for performance-based contracts to achieve Departmental objectives and desired improvements in contractor management of employee benefit programs.
 - (2) Approve the adoption by contractors of corporate benefit programs that incorporate the policy, procedures, cost sharing, and other arrangements of their parent organizations and/or any proposed changes to the existing and approved contractor employee benefit program.
 - (3) Evaluate contractor benefit programs on a periodic basis using the ben-val and cost-survey measures to assess program competitiveness and ensure costs are reasonable and allowable.
 - (4) For other than corporate benefit programs, approve employee benefit programs, consistent with paragraphs 3d(6) through 3d(9) below. The ben-val measure of net benefit value and the cost-survey measure of per capita cost will be used in this evaluation to establish an appropriate comparison.
 - (5) Instruct contractors on the conduct of self-evaluations and use of the net ben-val and cost-survey per capita cost measures for evaluating contractor employee benefit programs.

- (6) Determine whether in-depth studies of specific benefit plans or corrective actions are required when net benefit value and per capita costs are 5 percent or more above comparator employers (i.e., target range of acceptability).
- (7) Require contractors to conduct in-depth studies to analyze the specific benefit plans that are above and below the comparator and to submit corrective action plans to align excessive net benefit values within the target range of 105 percent.
- (8) Require contractors to review specific benefit plan costs that are above the 105 percent target and determine whether they should submit corrective action plans to achieve conformance with the per capita cost target range.
- (9) Require contractors, consistent with paragraphs 3d(7) and 3d(8) above, to submit corrective action plans when both the contractor net benefit value and employee per capita cost are greater than 5 percent above the comparator.
- (10) Approve contractor corrective action plans to align contractor net benefit value within the target range and evaluate contractor progress against the plan.
- (11) Approve contractor employee benefit programs and program changes in accordance with the aforementioned criteria set forth in paragraphs 3d(6) through 3d(9) above. If the program or changes to the program result in the contractor's benefit value and per capita cost exceeding the target range of 105 percent defined in 3d(6) above, the program changes must be offset by changes that result in the alignment of net benefit value within the target range.
- (12) Obtain approval of the DOE and NNSA procurement executives for contractor benefit plans and proposed changes that are exceptions to DOE policy and when the DOE procurement executive advises that such employee benefit plans/changes set a precedent for the DOE contractor system.
- (13) Approve all workers' compensation insurance policies ensuring that all facility management contractors obtain workers' compensation insurance coverage under the endorsement of the Department of Energy Retrospective Rating Insurance Program unless another arrangement has been approved by the Department.
- (14) Approve the purchase of other types of insurance, such as "paid loss" retrospective rating insurance plans, where claims reserves are developed based on the estimated value of paid losses with no accounting for incurred but not reported losses and other loss development factors that

are accounted for under the “incurred loss” retrospective rating insurance plan, provided that the following conditions are met.

- (a) Contractors provide full disclosure of the unfunded liability (difference between the actuarially determined incurred losses minus paid losses) on an annual basis and certify that annual charges to DOE contracts will be based on paid and not incurred losses.
 - (b) There is a provision that in the event of cancellation or nonrenewal by the insurance company, 60 days advance notice will be given to the contractor and the contracting officer.
 - (c) There is a provision limiting the insurance company’s right of inspection of the contractors’ records and premises as necessary to comply with DOE security requirements.
 - (d) There is a provision for the right of assignment of the policy to DOE, with payment of all return premiums, premium refunds, dividends, or other monies due or to become due, to DOE.
 - (e) There is a provision for employer’s liability coverage, except in cases where the contractor has an acceptable self-insurance program.
 - (f) There is a provision for workers’ compensation and employer’s liability coverage for employees in those States that allow statutory immunity for certain types of employers (e.g., nonprofit educational institutions)
 - (g) There is a voluntary compensation endorsement in States that do not automatically provide voluntary coverage. This allows for coverage of employees or volunteers who would not otherwise be covered for injuries sustained while performing extracurricular activities (e.g., employees participating in athletic events or volunteers at the work site). An additional endorsement is necessary to extend voluntary compensation coverage to occupational disease.
- (15) Approve self-insured workers’ compensation programs pursuant to the cost principles at FAR 28.308 and FAR 31.205-19, and ensure that contractors agree to—
- (a) discount losses to present value using the interest rate determined by the Secretary of the Treasury (see <http://www.publicdebt.treas.gov/opd/opdprmt2.htm>) pursuant to P.L. 92-41, at the time the loss is recognized, where payment for

total incurred losses or liability will not take place for more than 1 year after the loss is incurred, and

- (b) for funded claims reserves, submit a detailed Statement of Account and proof that the annual self-insurance accrual and charges to DOE contracts take into account the earnings or losses of the workers' compensation trust or fund account.
- (16) Approve all workers' compensation claim settlements valued at and above \$100,000 or claims valued at and above the agreed upon dollar threshold under the contract.
- (17) Assign responsibility for and require contractors to—
 - (a) demonstrate the accuracy of adjusted premiums for all retrospective rating insurance plans,
 - (b) demonstrate the reasonableness of self-insured workers' compensation claims reserves, and
 - (c) demonstrate that claims are well managed by conducting periodic audits of claims at claims servicing units and provide written reports to contracting officers under purchased and self-insured workers' compensation insurance programs.
- (18) Ensure contractors conduct yearly analyses and evaluations of workers' compensation costs as a percent of payroll as compared with the percent of payroll cost reported by a nationally recognized Cost of Risk Survey, preapproved by the Department, to assess the efficacy of programs and ensure costs are reasonable and allowable.
- (19) Ensure all solicitations and contract documents contain the appropriate insurance and employee benefit provisions and clauses cited at FAR 52.228, Bonds and insurance provisions and clauses, and DEAR 970.5228-1, Insurance-Litigation and claims.
- (20) Ensure that, where appropriate, competitive procurement procedures are followed by contractors to obtain needed insurance coverage.
- (21) Ensure efficient administration of contractor's workers' compensation insurance plans and supplemental employee benefit plans (such as salary continuation, short-term disability), so that the sum total of salary replacement benefits under all plans does not exceed 100 percent of the employee's net income.
- (22) Ensure that subsequent to contract termination or expiration benefit continuation will be provided for those contractor employees who earned

such benefits under an approved benefit plan, on a funding basis most reasonable to the Department. Acceptable options for these provisions include the following:

- (a) paying a lump sum to the outgoing contractor to continue its liability,
 - (b) paying a third party such as an insurer or other contractor to guarantee benefit payments, or
 - (c) continuing benefit payment obligation with the replacement contractor.
- (23) Ensure that funding in advance for benefits earned by contractor retirees will not be allowed unless such funding is required by State or Federal statute. Such benefit payments must be provided on a pay-as-you-go basis.
- (24) Ensure contractors support the DOE program to provide assistance to all former and current employees applying for workers' compensation benefits under EEOICPA, including assisting them in obtaining records such as verified employment histories and medical records pertinent to the condition or case.
- (25) Ensure that DOE, NNSA, and contractor representatives are designated to serve as members of the Department of Energy Worker Advocacy Group described in paragraph 3e(1) below.
- (26) Ensure timely entry in the DOE Workforce Information System of compensation and benefit data by contractors for compliance with the required annual submission of contractor expenditures for employee supplemental compensation.

e. Assistant Secretary for Environment, Safety and Health.

- (1) Establishes and chairs the Department of Energy Worker's Advocacy Group to serve as a vehicle to coordinate the consistent implementation of the EEOICPA requirements in this Order throughout the Department, identify and resolve implementation issues as they arise, and obtain advice from Headquarters and field elements regarding potential impacts that implementation of workers' compensation programs may have on EEOICPA activities.
- (2) Negotiates with individual States to develop and put into place the agreements authorized by Section 3661 of EEOICPA.

f. Chief Financial Officer (CFO).

- (1) Concurs in benefit plans and proposed changes that set precedent, as necessary.
- (2) Collects accrual estimates and disclosure information on contractor postretirement benefits other than pensions for inclusion in the Department's consolidated financial statements.
- (3) Supports negotiation of contract provisions affecting contractor benefit programs, as necessary.

g. Director, Office of Legacy Management.

- (1) Provides oversight and develops policy for contractor postclosure retiree benefit programs.
- (2) Implements a Departmental policy concerning closure site contractor employees for continuity of their postclosure retiree benefits.
- (3) Manages the procurement concerning contractor postclosure retiree benefits.

4. REFERENCES.

- a. FAR 28.3, Insurance.
- b. FAR 31.205-6, Compensation for personal services.
- c. FAR 31.205-19, Insurance and indemnification.
- d. DEAR 970.3102-05-6, Compensation for personal services.

5. CONTACT. Office of Resource Management, 202-586-1368.

CHAPTER VI. DOE CONTRACTOR PENSION AND RETIREMENT INCOME PLANS

1. OBJECTIVES.

- a. To ensure contractors develop retirement income programs that will facilitate the achievement of human resource objectives and business strategies in support of DOE missions in a cost-effective manner.
- b. To assign DOE oversight responsibilities for the establishment, maintenance, and termination of pension plans provided for personnel employed by designated contractors at DOE facilities.
- c. To properly consign pension plan assets when contractors are replaced, a portion of the existing plan is spun off, or a plan is fully or partially terminated.
- d. To provide guidance regarding the contractual treatment of separate and commingled pension plans where DOE has a continuing, long-term involvement.

2. REQUIREMENTS.

- a. Reasonableness and allowability of compensation, including pension plans and retirement income benefits, will be determined in accordance with DEAR Contract Cost Principles and Procedures to the extent applicable, otherwise in accordance with the guidelines at FAR 31.205-6 and Cost Accounting Standards (CASs) 412, Composition and Measurement of Pension Cost; 413, Adjustment and Allocation of Pension Cost; and 415, Accounting for the Cost of Deferred Compensation.
- b. The following measures must be implemented for each contract that provides a continuing Departmental pension obligation.
 - (1) Separate accounting for DOE assets resulting from DOE reimbursements and separate accounting for DOE liabilities resulting from service under DOE contracts.
 - (2) Contractor reimbursement to DOE of excess assets at time of contract termination or expiration or pension plan termination.
 - (3) Limitation on annual DOE reimbursement of contributions.
 - (4) Approval by DOE of any retirement income and pension plan change.

3. RESPONSIBILITIES.

- a. DOE Procurement Executive.
 - (1) In consultation with the CFO, approves contract provisions for contractor pension plans and other retirement income programs and changes to

contractor pension plans and other retirement income programs covered by this Order, including such things as an early retirement incentive program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, lump sum option, Internal Revenue Code (IRC) Section 420 transfers, or ancillary benefits.

- (2) Establishes policy and requirements for contractor pension plans at DOE facilities.
- (3) Provides guidance to Departmental elements on contractor pension matters.
- (4) Advises the program Secretarial Offices and contracting officers concerning—
 - (a) structuring of pension plans, including funding levels and actuarial assumptions;
 - (b) final settlements of assets and liabilities; and
 - (c) DOE-reimbursable portions of contractor contributions to Taft-Hartley Act pension plans.
- (5) Approves changes to contractor pension plan provisions including Taft-Hartley Act pension plan provisions
- (6) Maintains liaison on contractor pension matters with DOL, the Internal Revenue Service (IRS), the Pension Benefit Guaranty Corporation, and the Cost Accounting Standards Board.
- (7) Ensures reconciliation of identified instances of temporary technical inconsistency between CASs and DOE pension plan funding policy.

b. NNSA Procurement Executive.

- (1) In consultation with the CFO, approves contract provisions for contractor pension plans and other retirement income programs.
- (2) Establishes policy and requirements for contractor pension plans at NNSA facilities.
- (3) Approves changes to contractor pension plan provisions including Taft-Hartley Act pension plan provisions.
- (4) Ensures reconciliation of identified instances of temporary technical inconsistency between CASs and DOE pension plan funding policy.

- c. HCAAs or NNSA Site Office Managers. Consult with PSOs, provide guidance, and ensure that contracting officers and those who support contracting officers have the skills, knowledge, and abilities to perform their duties and responsibilities.
- d. Contracting Officers.
 - (1) Propose contract provisions for contractor pension programs covered by this Order.
 - (2) Negotiate settlements according to the terms of the contract when a pension plan is modified or terminated, either fully or partially, and obtain approval of the DOE and NNSA procurement executives and concurrence of the CFO for such settlements before authorizing their implementation.
 - (3) In consultation with the CFO and the Office of Resource Management, negotiate contract provisions affecting contractor pension programs.
 - (4) Advise the PSOs, CFO, and DOE and NNSA procurement executives of any significant changes in the funding status or level of assets in a pension plan.
 - (5) Annually review asset reversion clauses in contractor pension plans and in contracts for designation of the recipient of any surpluses.
 - (6) Review contractor proposals to change pension plans or to change contract language affecting pension plans, make recommendations to PSOs regarding such proposals, and ensure that such proposals have been approved by the DOE and NNSA procurement executives before authorizing implementation.
 - (7) Provide support to the DOE and NNSA procurement executives in developing recommendations for proposed changes to contractor pension plans based on analyses of information from sources approved by the procurement executives such as the following:
 - (a) professionally recognized benefit value studies;
 - (b) analyses of the contractor's total compensation package;
 - (c) pension benefit surveys published by the Bureau of Labor Statistics;
 - (d) software models developed by qualified actuaries; and
 - (e) retirement studies published by consulting firms, educational institutions, or policy groups.

- (8) Ensure receipt from contractors of the annual actuarial valuation report for each DOE reimbursed pension plan and copies of the contractors' IRS Form 5500, Annual Return/Report of Employee Benefit Plan, with schedules, and Form 5300, Application for Determination for Employee Benefit Plan, with schedule, as appropriate, consistent with contract provisions.
 - (9) Notify the DOE and NNSA procurement executives and the CFO if the DOE pension plan funding policy results in technical inconsistency with CASs.
- e. General Counsel. Advises and assists in negotiations at time of contract termination, plan termination, plan spin-off, plan merger, or early-retirement incentive program, and reviews fiduciary documents, as necessary.
- f. CFO.
 - (1) Concurs in plan termination settlements, plan spin-offs, plan mergers, and early-retirement incentive programs, and reviews fiduciary documents, as necessary.
 - (2) Collects contractor pension plan Financial Accounting Standards Board Statement 87 valuations, and aggregates asset and liability figures from them for inclusion in the Department's consolidated financial statement.
 - (3) Consults with the DOE and NNSA procurement executives to reconcile instances of temporary technical inconsistency between CASs and DOE pension plan funding policy.
 - (4) Supports negotiation of contract provisions affecting contractor pension programs and other retirement income programs covered by this Order.
- g. Director, Office of Legacy Management.
 - (1) Provides oversight and develops policy for contractor postclosure retiree benefit programs.
 - (2) Implements a Departmental policy concerning closure site contractor employees for continuity of their postclosure retiree benefits.
 - (3) Manages the procurement concerning contractor postclosure retiree benefits.

4. REFERENCES.

- a. Employee Retirement Income Security Act of 1974 (also known as ERISA; P.L. 93-406; 29 U.S.C., Sections 1001, *et seq.*), as amended, which defines federally mandated features of pension plans.

- b. IRC Sections 401 through 418 (26 U.S.C. 401–418), which establish nondiscrimination and funding requirements, *inter alia*, that a pension plan must meet to qualify for a tax deduction.
 - c. Final and Temporary IRS Regulations 1.401 through 1.418, which provide working guidelines for applying the principles of the IRC.
 - d. Final and Temporary DOL Regulations 860 and 2500 through 2599, which provide minimum standards for pension accrual formulas, pension crediting, retirement eligibility, and fiduciary roles.
 - e. The Labor Management Relations Act of 1947 (also known as the Taft-Hartley Act; 29 U.S.C., Sections 141, *et seq.*), which establishes the legal basis for collectively bargained, trustee pension plans.
 - f. CASs 412, Composition and Measurement of Pension Cost; 413, Adjustment and Allocation of Pension Cost; and 415, Accounting for the Cost of Deferred Compensation, which describe minimum standards for measuring and allocating pension costs to a government contract activity.
 - g. DEAR Subpart 970.31, Contract Cost Principles and Procedures, which establishes the allocability and allowability of DOE contractor pension plans.
 - h. FAR Part 31, Contract Cost Principles and Procedures, which establishes Federal contract cost principles and procedures.
 - i. FAR Subpart 32.6, Contract Debts, which establishes Federal authority to collect debt.
 - j. Financial Accounting Standards Board Statements 35, Present Value of Accumulated Plan Benefits; 87, Employer's Accounting for Pensions; and 88, Employer's Accounting for Settlements and Curtailments of Defined Benefit Pension Plans and for Termination Benefits, which provide generally accepted accounting principles for reporting pension expenses to the contractor's stockholders and to the Securities and Exchange Commission.
 - k. The Multiemployer Pension Plan Amendments Act of 1980 (P.L. 96-364, dated 9-26-80), which establishes the basis for collectively bargained plans that have more than one sponsor.
5. CONTACT. Office of Resource Management, 202-586-1368.

APPENDIX VI-1. DEFINITIONS

1. Commingled Plans. Cover employees from the contractor's private operations and its DOE contract work.
2. Current Liability. The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.
3. Defined Benefit Pension Plan. Provides a pension amount calculated by applying to an employee's service (and, in some cases, to an employee's salary) a formula specified in the plan document.
4. Defined Contribution Pension Plan. Provides to each plan participant the accumulation of employer contributions, employee contributions, and investment returns on behalf of that plan participant. The plan specifies contributions (normally as a percent of salary). The plan also specifies the permissible timing, type, and amount of payments to the plan participants or survivors.
5. Designated Contract. For purposes of this Order, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the head of Departmental contracting activities determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.
6. Pension Fund. The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.
7. Separate Accounting. Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service. Note: The assets so represented are not for the exclusive benefit of any one group of plan participants.
8. Separate Plan. Must satisfy Internal Revenue Code Sec. 414(1) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own Department of Labor plan number) that is distinct from corporate plan documents, and identify the contractor as the plan sponsor.
9. Spun-Off Plan. A new plan which satisfies Internal Revenue Code Reg. 414(1)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits will be no less than before the event, when calculated on a plan termination basis.

CHAPTER VII. RISK MANAGEMENT AND LIABILITY PROGRAMS

1. OBJECTIVES.

- a. To assign responsibilities and authorities for review and approval of contractor liability insurance programs.
- b. To ensure DOE compliance with applicable liability and indemnification requirements.
- c. To provide a framework through which DOE contractors can develop cost-effective programs for handling liability matters peculiar to their operational responsibilities.

2. REQUIREMENTS. Reasonableness and allowability of risk will be determined for contractors who manage and operate DOE facilities, in accordance with this Order and the appropriate FAR and DEAR provisions under their contracts.

3. RESPONSIBILITIES.

a. Director, Office of Contractor Management and Administration.

- (1) Develops and assists with the implementation of policies, procedures, and standards for contractor insurance programs.
- (2) Provides advice and assistance to heads of Departmental and field elements on all contractor insurance matters, when requested. Areas of consultation include the following:
 - (a) policy and plan review,
 - (b) claims administration review for adequacy and cost effectiveness,
 - (c) final insurance policy/program cost settlements,
 - (d) claim threshold reviews and reviews of claims that exceed established thresholds,
 - (e) negotiation of procured claims services, and
 - (f) required language in covered contracts.
- (3) Maintains liaison and consults with other Federal agencies and insurance industry organizations concerning insurance matters.
- (4) Maintains contractor insurance data sufficient to serve as a program baseline and provide overall measurement and justification for implementation of program initiatives and direction.

b. HCAAs or NNSA Site Office Managers.

- (1) Ensure compliance with the policies, procedures, and requirements set forth in this chapter.
- (2) Ensure proposed commercial insurance policies clearly define and include the liability coverage required/desired; that the cost for proposed coverage is fair and reasonable; and that commercial insurance, self-insurance, and DOE third-party administrator options are considered.

c. DOE Contracting Officers.

- (1) Establish and negotiate contract provisions affecting contractor insurance programs.
- (2) Approve contractor insurance policies and plans proposed for operations at DOE facilities when delegated by HCAs.
- (3) Approve renewal insurance policies and plans for contractor operations at DOE facilities.
- (4) Ensure solicitations and contracts contain required insurance language and clauses.
- (5) Provide copies of contractor insurance policies, contracts, and claims during the year expected to become major claims (e.g., those valued at \$100,000 or greater) to the Office of Contract Management.
- (6) In cases where site operations are terminated or the contractor is otherwise replaced by a successor, ensure the following.
 - (a) Cancellation credits due to policy terminations and/or experience reporting are properly recorded.
 - (b) Continuing policy administration requirements are identified and the assignment of policies continues with the terminated contractor or is reassigned to the successor contractor if possible, or if not, then the policies are assigned to the DOE field office.
 - (c) The contractor, if self-insured, reaches agreement on the handling and settlement of claims incurred but not reported at the time of contract termination. Otherwise, ensure the contractor retains all liability regarding such claims.
 - (d) Policies are assigned to DOE after all claims are closed.

4. REFERENCES.

- a. Atomic Energy Act of 1954, P.L. 85-265, as amended.
- b. Energy Employees Occupational Illness Compensation Program Act of 2000 (also known as EEOICPA; P.L. 106-398).
- c. FAR Subpart 28.3, Insurance.
- d. DEAR Subpart 928.3, Insurance.
- e. FAR Part 30, Cost Accounting Standards Administration.
- f. FAR 31.205-19, Insurance and indemnification.
- g. CAS 416, Accounting for Insurance Costs.
- h. DEAR Part 950, Extraordinary Contractual Actions, which describes DOE contractual indemnification authority for nuclear and nonnuclear public liability risks.
- i. DEAR Subpart 950.70, Nuclear Indemnification of DOE Contractors.
- j. DEAR Subpart 950.71, General Contract Authority Indemnity.
- k. DEAR Part 928, Bonds and Insurance.
- l. DEAR 970.5228-1, Insurance-Litigation and claims.

5. CONTACT. Office of Contractor Management, 202-586-329

APPENDIX VII-1. ADDITIONAL GUIDANCE

Contractors selected to manage and operate DOE-owned facilities have traditionally used insurance companies to provide claims and settlement services. These traditional policies are referred to as “service-type policies” or “retrospective policies.” Under such policies, DOE has underwritten losses to the extent the losses were allowable under the terms of the contract. The contractor has some flexibility as to how it sets up its insurance program; however, if it is determined that specific alternative arrangements, as noted below, will be in the Government’s best interest, DOE officials may require participation by DOE contractors.

1. SERVICE-TYPE (RETROSPECTIVE) INSURANCE POLICIES. These policies represent an unbundling of insurer services to allow claims adjustment and settlement only. Under this arrangement, an insurer issues policies to the DOE contractor and the insurer’s claims services are then used; however, no contingent liabilities are transferred to the insurer. Various types of claims can be handled under these policies, as approved by the appropriate DOE contracting official. The cost of the policy is the cost of claims plus adjustment costs, administrative costs (e.g., taxes), and a fee for service to the insurer. Adjustment costs are to be determined on a basis that avoids in fact and appearance a percentage of cost fee structure. Final cost is not determined until the policy is cancelled or expires and all claims incurred have been processed and settled. Certificates of insurance can be issued by the insurer as required to show proof of financial responsibility.
2. SELF-INSURANCE BY DOE CONTRACTORS. This program requires contractors to service claims using their own personnel or to acquire a third-party administrator (TPA) to service claims. Previously, some DOE self-insured contractors have used a TPA contractor to accomplish their claim services. TPAs offer administrative services, including claims investigation and claims settlement and possibly other related services.

APPENDIX VII-2. CONTRACTOR LIABILITY SCENARIOS

The following are some of the types of liability to which a contractor might be exposed.

1. Premises and Operations Liability Exposures. Premises and operations claims can arise out of either the premises owned or used or out of operations conducted at or away from these premises.
2. Products and Completed Operations Liability Exposures. Products claims can arise out of goods that have been manufactured, sold, handled, or distributed; completed operations claims can arise out of services performed after such services have been completed.
3. Employee Benefit Programs Liability Exposures. Employee benefit program claims can arise out of negligent administration of such plans by those authorized to act in some certain administrative capacity for the plans.
4. Fiduciary Liability Exposures. Fiduciary claims can arise from violations or alleged violations of the responsibilities, obligations, or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 or amendments thereto.
5. Employers Liability Exposures. Employer claims can arise when an employee is injured or becomes stricken with an occupational disease as a result of an employer's negligence. Note: Workers' compensation is payable to employees even when an employer has met its "duty of care" responsibilities.
6. Pollution Liability Exposures. Pollution claims can arise as a result of careless or reckless conduct that damages others through the impairment of air, land, or water resources.
7. Medical Malpractice Liability Exposures. Medical malpractice claims can arise when others are damaged by medical professionals who have breached a standard or standards of care.
8. Auto, Aircraft, or Watercraft Liability Exposures. Auto, aircraft, or watercraft claims can arise when, through the use of such vehicles, third persons are damaged.

APPENDIX VII-3. DEFINITIONS

1. Liability. A condition of being legally bound in law and justice to do something that may be enforced in the courts. Liability insurance can provide extremely broad coverage for this legal exposure.
2. Commercial Insurance Policy. A contract in which one party, for legal consideration, agrees to reimburse another for a loss caused by designated contingencies. The first party is called the insurer or underwriter; the second, the insured or policyholder; the contract is the insurance policy; the legal consideration is the premium; the bodily injury or property insured is the exposure; and the contingency is the happening of the insured event.
3. Service-Type (Retrospective) Insurance Policy. An insurance policy (contract) in which the cost of the policy (premium) equals the policyholder's claims experience and the insurer's administration cost, plus a fee to the insurer. Under this type of policy, the insurance company does not use its own assets to reimburse the policy holder for a loss caused by covered contingencies. The policy provides only for claim processing and any other designated services.
4. Self-Insurer. An individual, partnership, or corporation that retains responsibility, including use of its own assets to reimburse, for all or part of its contingent losses.
5. Risk. The hazard or condition whose measure relates to the likely frequency or severity of loss.
6. Risk Management. A discipline with the goal to protect the assets and profits of an organization by reducing the potential for a loss before it occurs. Includes appropriate financing, through insurance and other means, and reduction of potential exposures to catastrophic loss such as acts of God, human error, or court judgments.
7. Administrative Services Contract. An arrangement under which an insurer (underwriter), insurance broker, or other organization provides administrative services only (e.g., claims investigation, claims settlement). The party acquiring the service retains the liability for loss exposure and losses incurred (self-insurance).
8. Third-Party Administrator (TPA). The organization that has a contract requiring performance of administrative services only.

DOE ORGANIZATIONS TO WHICH DOE O 350.1X IS APPLICABLE

Office of the Secretary
Chief Information Officer
Office of Civilian Radioactive Waste Management
Office of Congressional and Intergovernmental Affairs
Office of Counterintelligence
Departmental Representative to the Defense Nuclear Facilities Safety Board
Office of Economic Impact and Diversity
Office of Electric Transmission and Distribution
Office of Energy Efficiency and Renewable Energy
Energy Information Administration
Office of Environment, Safety and Health
Office of Environmental Management
Office of Fossil Energy
Office of General Counsel
Office of Hearings and Appeals
Office of Independent Oversight and Performance Assurance
Office of the Inspector General
Office of Intelligence
Office of Management, Budget and Evaluation and Chief Financial Officer
National Nuclear Security Administration*

- Office of the Deputy Administrator for Defense Programs
- Office of the Deputy Administrator for Defense Nuclear Nonproliferation
- Office of Emergency Operations
- Office of the Associate Administrator for Facilities and Operations
- Office of the Associate Administrator for Management and Administration

Office of Nuclear Energy, Science and Technology
Office of Policy and International Affairs
Office of Public Affairs
Office of Science
Secretary of Energy Advisory Board
Office of Security
Office of Legacy Management
Office of Energy Assurance
Bonneville Power Administration
Southeastern Power Administration
Southwestern Power Administration
Western Area Power Administration